

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: MIDAMERICAN ENERGY COMPANY	DOCKET NO. EPB-02-156
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**ORDER ESTABLISHING ISSUES ON APPEAL AND SETTING
DATE FOR FILING BRIEFS**

(Issued April 17, 2003)

On April 1, 2002, MidAmerican Energy Company (MidAmerican) filed its multi-year emissions plan and budget (EPB) for managing regulated emissions from its coal-fueled electric power generating facilities located in Iowa pursuant to Iowa Code § 476.6(25).

Iowa Code § 476.6(25)"a"(3) provides that an investor-owned utility's EPB shall be considered in a contested case proceeding pursuant to Iowa Code chapter 17A. On April 26, 2002, the Utilities Board (Board) docketed the proceeding as a formal contested case and established a procedural schedule for the filing of testimony. The EPB was identified as Docket No. EPB-02-156.

On June 17, 2002, the Board issued an order assigning the docket to the administrative law judge (ALJ) to establish a procedural schedule, set a hearing date, and conduct the proceedings. Iowa Code § 476.6(25)"d" provides that the Board shall issue an order approving or rejecting an EPB within 180 days after the utility's filing is deemed complete. On October 10, 2002, an order was issued by the ALJ

deeming the EPB complete, setting a procedural schedule, and establishing a hearing date. The ALJ conducted the proceedings as scheduled and subsequently issued a proposed decision and order approving MidAmerican's EPB as amended.

Subrule 199 IAC 7.8(2) requires that appeals from the proposed decision of the ALJ be filed within 15 days of the date the decision is issued. Appeals were timely filed by MidAmerican and the Consumer Advocate Division of the Department of Justice (Consumer Advocate). Timely responses to the appeals were also filed by MidAmerican and Consumer Advocate. Neither party requested opportunity for argument.

Pursuant to 199 IAC 7.8(2)"d," the Board must issue a ruling on the issues to be decided on appeal within 20 days of the date of the notice of appeal. The Board will set out the issues that will be considered on appeal and will set a date for filing briefs on those issues.

ISSUES FOR CONSIDERATION ON APPEAL

- 1. Whether approval of MidAmerican's proposed emissions budget also means approval of MidAmerican's expenditures.**

Consumer Advocate contends that there should be two separate determinations of reasonableness. Consumer Advocate asserts that the first determination is whether the EPB is reasonable pursuant to Iowa Code § 476.6(25)"c" and that the second determination is whether the costs incurred in implementing the EPB were in accordance with the approved EPB pursuant to Iowa

Code § 476.6(25)"e." Consumer Advocate contends that the second determination should be made in a separate proceeding before the Board.

MidAmerican believes that the proposed decision, which asserts that there is only one determination of reasonableness to be made, reflects the only possible interpretation of the new statute as it is consistent with the express statutory language and legislative intent.

The Board finds that this issue should be considered on appeal.

2. Whether the analysis regarding the tracker mechanism is rendered moot by the subsequent filing of MidAmerican's windpower stipulation and should be eliminated from the final order.

MidAmerican contends that the ALJ's analysis regarding the tracker mechanism has been rendered moot as a result of the filing of its wind power stipulation which has the effect of preventing MidAmerican from utilizing the tracker mechanism until at least the conclusion of the nine-year EPB period. MidAmerican asserts that because the issue is moot, the analysis of the issue should be removed from the final order as it essentially becomes an advisory opinion on a moot issue.

Consumer Advocate disagrees with MidAmerican's opinion that the tracker mechanism issue is moot and points out that this issue was decided at the explicit request of MidAmerican.

The Board finds that this issue should be considered on appeal.

The Board will allow the parties to file briefs concerning the issues the Board has identified as issues to be decided on appeal. The Board will reserve a decision

on whether to reopen the record until it has completed consideration of the briefs. The Board will not schedule oral arguments at this time. Additionally, the Board reserves the right to address other issues that it finds to be relevant during its consideration of the proposed order.

IT IS THEREFORE ORDERED:

Simultaneous briefs addressing the issues to be decided by the Utilities Board on appeal, as described in this order, shall be filed on or before April 28, 2003.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 17th day of April, 2003.